

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

KELLY WILLIAMSON COMPANY

Employer

and

Case 33-RC-4890

TEAMSTERS LOCAL NO. 325, affiliated with
the INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION

The Employer, Kelly Williamson Company, is engaged in the retail and nonretail sale and distribution of gasoline, oil and related products to customers located in Illinois and Wisconsin. The Petitioner, Teamsters Local No. 325, affiliated with the International Brotherhood of Teamsters, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The Petitioner seeks to represent a unit of all full-time and regular part-time transport, tank wagon and package goods drivers employed by the Employer at its Harrison Avenue facility in Rockford, Illinois. A hearing officer of the Board held a hearing and the parties filed briefs with me.¹

¹ Pursuant to Rule 102.111, Petitioner's brief was not timely filed and cannot be considered. Petitioner received an extension of time until October 13, 2004 to file its brief. Petitioner's brief was not served until October 14 and did not arrive in the Subregional office until October 15. I rejected the brief. Petitioner has moved that I reconsider. In support of its motion, Petitioner states it mistakenly believed I granted an extension of time until October 15, and that no prejudice or significant delay would result. Petitioner's inadvertence does not constitute excusable neglect on which to reconsider and the brief remains rejected. See generally, *Elevator Constructors Local 2 (Unitec Elevator Services Co.)*, 337 NLRB 426 (2002) (requiring strict application of Rule 102.111).

As evidenced at the hearing and in the Employer's brief, the parties disagree on whether the unit must also include five bulk oil drivers from the Employer's Tay Street facility and two transport drivers who live and work in Madison, Wisconsin. The Petitioner contends that the single-facility unit is appropriate. The Employer contends that the only appropriate unit must also include the bulk oil drivers and the Madison, Wisconsin transport drivers. I have considered the evidence and arguments presented by the parties on the issues in dispute, and I find that the only appropriate unit must include the bulk oil drivers from the Employer's Tay Street facility and the two Madison, Wisconsin transport drivers.

I. OVERVIEW OF OPERATIONS

The Employer's operations include its headquarters at the Harrison Avenue facility; an oil storage facility located on Tay Street, also in Rockford, and 45 convenience store/gas stations located in Illinois and Wisconsin. The headquarters facility includes an office building, a warehouse and garage facility as well as a small fuel tank farm. The Employer's higher-level management and supervision, including the human resources manager, the distribution manager, and the dispatcher are located at this facility. The Tay Street facility is primarily a bulk oil storage facility consisting of a number of above ground tanks. The facility also includes a small pole building where the phone, fax machine and computer are located. No manager, supervisor or office personnel are located at this facility. The Employer employs a total of 487 employees, 24 of these employees are drivers, who transport fuel, oil and related products to the Employer's gas stations as well as to other customers such as car dealerships, quick lube shops, private residences and construction companies. The drivers are the only employees at issue here.

The Employer utilizes four classifications of drivers: transport, bulk oil, package, and tank wagon. There are 10 transport drivers, 5 bulk oil drivers and a total of 9 package and tank wagon drivers. The transport, package and tank wagon drivers report to the Harrison Avenue facility, where their trucks are parked. The two Madison, Wisconsin transport drivers work out of

their homes and share a transport truck. The record does not reflect where this truck is parked when not in use. The bulk oil drivers work out of the Tay Street facility, where their trucks are parked. The transport drivers drive 18 wheel tanker trucks and pick up diesel fuel and gasoline at local terminals and deliver it to either a customer or one of the Employer's gas stations. One transport driver primarily picks up oil and lubricants from a supplier in Chicago for the Tay Street facility.² The package goods drivers drive a box truck to deliver drums, cases and cartons of oil, grease and other products for retail sale. Two of the package trucks also have the equipment to pump and transport bulk oil, which they do approximately once a week.

The tank wagon and bulk oil drivers use almost identical trucks to make their deliveries. The trucks are small, straight trucks ranging in size from a couple of thousand gallons to 4,500 gallons. A bulk oil truck, as compared to a tank wagon truck, has an additional meter on it. Bulk oil drivers generally deliver oil and related products, which is stored at the Tay Street facility. Some bulk oil trucks have a compartment for transporting package goods, and others have room to put a carton in the driver's cab. Tank wagon drivers deliver fuel, which is obtained from local terminals or the Harrison Street facility. Tank wagon drivers can transport multiple types of fuel and have the ability to make multiple deliveries from one load. Tank wagon drivers typically deliver diesel fuel, gasoline and home heating fuel to a variety of customers including car dealers, farmers and commercial accounts in Illinois and Southern Wisconsin.

II. THE ISSUES TO CONSIDER IN A MULTI-FACILITY SETTING

A single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate

² The Union considers this driver a bulk oil driver and would exclude him. As both bulk oil and transport drivers are included in the unit, the issue as to his proper classification is moot.

identity. See *J & L Plate, Inc.*, 310 NLRB 429 (1993). The party opposing the single-facility unit has the burden of rebutting its presumptive appropriateness. Although heavy, this burden does not require overwhelming evidence of a complete submersion, or obliteration, of the separate interests of the employees at the single facility. *Trane*, 339 NLRB 866 (2003); *Petrie Stores Corp.*, 266 NLRB 75, 76 (1983). To determine whether the single facility presumption has been rebutted, the Board examines a number of community of interest factors including: (1) control over labor relations and daily operations, including the extent of local autonomy; (2) employee contact and interchange; (3) similarity in job skills, functions and working conditions; (4) geographic proximity; and (5) bargaining history. *Trane*, supra; *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *New Britain Transportation Co.*, 330 NLRB 397 (1999); *R & D Trucking, Inc.*, 327 NLRB 531 (1999). Because there is no bargaining history at any of the locations, further analysis of that factor is unnecessary.

III. DISCUSSION OF THE RELEVANT FACTORS

A. Control Over Labor Relations and Daily Operations

The record establishes that control over both labor relations and daily operations is centralized at the Employer's Harrison Avenue facility for all 24 drivers employed by the Employer. The human resources manager handles all personnel issues including wages and payroll, hiring, firing and discipline. Training for all drivers is determined centrally and conducted either at the Harrison Avenue facility or by outside contractors in the Rockford area.

The daily operations at the Tay Street facility and in Madison, Wisconsin are completely controlled by management at the Harrison Avenue facility; there are no supervisors or managers at Tay Street or in Madison. The distribution manager at Harrison Avenue directly supervises all of the drivers at issue. The dispatcher directly assigns all work to the drivers. The dispatcher leaves initial work assignments on the voice mail boxes of all transport drivers, including the Madison drivers. Later in the day, the dispatcher distributes the remainder of the work assignments directly to the drivers via two-way radio. The dispatcher leaves the initial

assignments for the tank wagon drivers in the drivers room at the Harrison facility. Additional work assignments are thereafter distributed by the dispatcher via two-way radio. The dispatcher also sends work assignments to the bulk oil drivers at Tay Street, by fax, computer and also by preparing work packets which are picked up from the Harrison facility by one of the drivers, who then returns them to Tay Street. The record does not reflect exactly how the package good drivers receive work assignments other than they receive those assignments directly from the dispatcher. The dispatcher, rather than the distribution manager, monitors the work performance of all of the drivers throughout the day. At the end of the day, all drivers return their paperwork to the Harrison Avenue facility, either by dropping it off or, in the case of the Madison drivers, by fax. Hard copies of the paperwork are picked up from Madison every Thursday.

B. Employee Contact and Interchange

The record does not specifically establish instances of daily contact or interaction between any of the drivers. Start times vary for the drivers, ranging anywhere from 2:30 a.m. to 6 a.m. depending on their route and personal preference. All of the Rockford drivers have occasion for contact at the Harrison Avenue facility either when they pick up work assignments or product or when they drop off paperwork at the end of the day. All drivers have their trucks serviced and repaired at the Harrison Avenue facility. Common training sessions and driver meetings also provide opportunities for interaction among the drivers. The Madison, Wisconsin drivers travel to the Rockford area approximately 5 times per year for training and meetings. They also have their truck serviced at Harrison Avenue at 20,000 mile intervals, and deliver hard copies of their paperwork to a Rockford transport driver every Thursday.

The record does establish substantial interchange. A Rockford transport driver travels to Madison at least every Thursday, sometimes more frequently, to perform the work of the Madison drivers so that they can have a day off or because there is simply more work than they can handle. The bulk oil/transport driver fills in for all other drivers on an "as needed" basis.

The record does not reflect how often this occurs, except that he drove a package goods truck the week of the hearing and had previously filled in for another driver the month before. He also delivers fuel as well as bulk oil in his transport truck. The distribution manager testified that generally the transport drivers drive tank wagons on a routine basis and that they drove bulk oil trucks approximately 4 or 5 times in the past year. Generally, the other drivers are not qualified to drive the transport trucks. On at least a weekly basis, the drivers do interchange functions. Approximately once per week, a bulk oil driver picks up package goods at the Harrison facility and delivers it to a customer that requires both bulk oil and package goods. Similarly, at least once a week, a package goods driver delivers bulk oil to a customer. This bulk oil is packaged in drums at Tay Street and then brought to Harrison Avenue.

The record also establishes substantial permanent interchange between driver positions. The distribution manager estimated that in the past two years, at least 50 per cent of the drivers had worked in another position. Moreover, all of the drivers currently at Tay Street and all of the package goods drivers have worked as tank wagon drivers and later transferred to their current positions.

C. Similarity of Employee Skills, Functions, and Working Conditions

The tank wagon, bulk oil, and package goods drivers are required to have and maintain a Class B CDL. The tank wagon and bulk oil trucks are virtually identical and require the same skills to operate, load and unload. These trucks are also similar to the package good trucks as they are all straight trucks of comparable size and therefore the driving skills of all these drivers are very similar, as evidenced by the frequent transfer between positions. The transport drivers have greater driving skills and are required to have a Class A CDL. Moreover they deliver to service stations, which also requires special training. Thus, the transport drivers can perform the work of the other drivers but not vice-versa. All of the drivers transport hazardous materials and are therefore required to attend HAZWOPR training. All of the drivers, except for the

Madison drivers, potentially deliver to quarries and therefore are required to have MSHA (Mine Safety and Health Administration) training.

All of the drivers share similar terms and conditions of employment. The tank wagon, package goods and bulk oil drivers are all paid on the same hourly scale, commensurate with experience. The transport drivers are paid cents per mile, a “drop” amount for each delivery they make plus an hourly rate for any time waiting for deliveries to be loaded or unloaded. The lone exception is the bulk oil/ transport driver, who is paid an hourly rate. All of the drivers receive the identical health, vacation and retirement benefits. All drivers are subject to the same personnel and labor relations policies and the same supervision.

D. Geographic Proximity

The Tay Street and Harrison Avenue facilities are located about 3 to 4 miles apart in the city of Rockford, Illinois and Rockford is about 75 miles from Madison, Wisconsin.

IV. ANALYSIS

An examination of all of the factors set forth above establishes that the single-facility presumption has been rebutted and that the petitioned-for unit, limited to the Harrison Avenue facility is not appropriate. The record establishes that virtually all factors favor the inclusion of the Tay Street facility and establish that the Harrison Avenue and Tay Street facilities do not have separate identities. The labor relations and the daily operations of the two facilities are centrally controlled by management at the Harrison Avenue facility. The Tay Street facility has absolutely no local autonomy separate from Harrison Avenue. Although the record does not specifically establish frequent contact between the drivers at the two facilities, drivers from Tay Street go to Harrison Avenue on a daily basis. The record also establishes frequent interchange between the two facilities, both temporary and permanent, as well as a sharing of function, in that bulk oil drivers deliver package goods and package goods drivers deliver bulk oil. Moreover, the tank wagon drivers and the bulk oil drivers share identical terms and conditions of employment, identical skills, and drive essentially the same type of vehicle, the

only difference being one delivers fuel, the other oil. Although the two groups of drivers work out of separate facilities, these facilities are only a few miles apart. This short distance and the slight difference in function is clearly insufficient to outweigh identical skills and working conditions, contact and interchange and most significantly, the central control and the complete lack of local supervision and autonomy at Tay Street. *Trane*, 339 NLRB 866 (2003); *R & D Trucking, Inc.*, 327 NLRB 531 (1999).

The record further establishes that the appropriate unit must also include the transport drivers working in Madison, Wisconsin. Although the distance between Madison and Rockford is significant, these drivers do not have an identity separate from the Harrison transport drivers and they share an overwhelming community of interest with those drivers. The Madison transport drivers perform the exact same work as the Harrison transport drivers, albeit in a different area. However, Harrison drivers frequently, at least once a week, go to Madison and perform the same work in the same area. Moreover, the Madison drivers share identical terms and conditions of employment and the same supervision and control. Only the distance between Rockford and Madison militates against a single unit, but even this factor is mitigated by the solitary nature of the work. *Trane*, supra at 868. Accordingly, I find that the presumptive appropriateness of the single facility unit has been rebutted and that the only appropriate unit must also include the drivers at the Tay Street facility as well as the Madison, Wisconsin drivers. *Trane*, supra; *R & D Trucking, Inc.*, supra.

V. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time transport, tank wagon, package goods and bulk oil drivers employed by the Employer at its Tay Street facility and Harrison Avenue facility in Rockford, Illinois and in Madison, Wisconsin, EXCLUDING sales, confidential, managerial, office clerical and professional employees, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. The employees in this voting group will vote on whether or not they wish to be represented for purposes of collective bargaining by the Petitioner, Teamsters Local Union No. 325, affiliated with the International Brotherhood of Teamsters, AFL-CIO.

³ The Employer, Kelly Williamson Company, an Illinois corporation, is engaged in retail petroleum distribution and marketing out of its facility in Rockford, Illinois. During the past twelve months, a representative period of time, the Employer purchased and received goods valued in excess of \$50,000 directly from sources outside the State of Illinois, and had gross revenues in excess of \$1,000,000.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer To Submit List Of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used in communication with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both

preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received by the Subregional Office, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois 61602, on or before **October 29, 2004**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (309) 671-7095 or by electronic mail at subregion33@nlrb.gov. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile or electronic mail in which case no copies need be submitted. If you have any questions, please contact the Subregional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer shall post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request

must be received by the Board in Washington by **November 5, 2004**. The request may not be filed by facsimile.

Dated: October 25, 2004
at: Saint Louis, Missouri

/s/ Ralph R. Tremain
Ralph R. Tremain, Regional Director,
National Labor Relations Board, Region 14
and Subregion 33